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MICHAEL RODAK, JR., CLER

In the Supreme Court of the United States

No. 71-1345

JAMES B. CRISMON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL PETITION FOR A WRIT OF CERTIORARI

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(On Brief)

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ADDITIONAL QUESTION PRESENTED

Whether the verdict directing instruction for Counts I, II, III, IV and VIII was in conflict with an applicable decision of this Court.

ADDITIONAL STATEMENT

Petitioner was indicted by the Federal Grand Jury in five counts for violation of Section 656, Title 18, United

States Code. Trial upon issues resulted and Petitioner being found guilty on each of the five counts with the sentence imposed under Count II to run consecutively with the sentence imposed under Count I and Counts III, IV and VIII to run concurrently with Counts I and II for a total of ten (10) years, and Petitioner was fined Five Thousand Dollars ($5,000.00) under Count VIII.

The part of the instruction complained of appears at page 1254 of the Transcript:

> "You are instructed that if the Board of Directors approved the actions of Defendant, that is a circumstance to be considered by you in determining whether the Defendant had an intent to injure or defraud the bank. However, the most formal vote of the Board of Directors could not authorize the willful misapplication of the monies, funds or credits of a bank. The authority of the officers of the bank and of its Board of Directors extends only to legitimate transactions honestly intended for the benefit of the bank."

The instruction was objected to and a contrary instruction was offered and refused as Instruction A.

REASONS FOR GRANTING THE WRIT

The Supreme Court has decided in *United States* v. *Britton,* 108 U.S. 193, 2 S.Ct. 526 that an officer submitting his own note, even though he is insolvent, and the Board of Directors knowing the facts, order the note to be discounted, that no criminal prosecution against the bank officer will lie, and that this is not willful misapplication of funds of the bank. This is the law of the case. This was not the instruction of law to the jury.

CONCLUSION

Therefore, it is respectfully submitted that this Petition for Writ of Certiorari should be sustained.

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